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CHEMICAL LAND HOLDINGS, INC.

January 16, 2002

U.S. Environmental Protection Agency, Region II
Emergency and Remedial Response Division
290 Broadway, 19th Floor, Room W-20
New York, NY 10007-1866

Attention: Ms. Janet Conetta
Strategic Integration Manager

Subject: Passaic River Study Area Creel/Angler Survey: Expert Panel Letter
Chemical Land Holdings, Inc.
Administrative Order on Consent Index No. II-CERCLA-0117

Reference: Letter from Dr. Paul Kostecki to Dr. Mark Harris
November 16, 2001
RE: Expert Panel Comments on the Passaic River Creel/Angler Survey

Dear Ms. Conetta:

Please find attached the above-referenced letter from Dr. Paul Kostecki, Executive Director of the Association for the Environmental Health of Soils (AEHS). This is the final product of the Expert Panel convened to evaluate the need for, and the work plan to conduct, a Creel Angler Survey (CAS) of the Passaic River Study Area, which was anticipated in the above-referenced Administrative Order on Consent (AOC). This panel was formed and it functioned in accordance with the guidance specified in EPA's letter to Chemical Land Holdings (CLH) dated November 17, 2000 (i.e., www.epa.gov/ORD/spc/2peerrev.htm).

Chemical Land Holdings (CLH) convened the Expert Panel as a result of the Environmental Protection Agency's (EPA's) disapproval of the CAS (letter from J. Conetta to C. Firstenberg, April 27, 2000), based on its review of the CAS Work Plan submitted by CLH in June 1999. EPA based this determination on its opinion that it would be "...impossible to obtain accurate responses...and, hence, valid data." CLH, in a meeting with EPA on May 23, 2000, demonstrated to EPA that an accurate and valid survey could be conducted. EPA agreed, but expressed its opinion that the survey would take 4 years to complete, with which statement CLH disagreed, and directed EPA's attention to the proposed CAS schedule of 15 months (reference Meeting Notes submitted by CLH under cover letter of C. Firstenberg to S. Jaffess, dated May 23, 2000). EPA declined to accept this proposal and would not revise its disallowance of the CAS.

CLH explained to EPA that it was committed to the collection of site-specific data, and that the collection of such data was a material inducement for it to have recommended that OCC enter into the AOC. Therefore, CLH informed the EPA at the conclusion of the May 23, 2000 meeting that it would proceed with the CAS as a private-scope project and complete the survey within a

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15-month time frame, as estimated by CLH. (CLH initiated the CAS in August 2000, completed the data collection in July 2001, and submitted the CAS Data Report on September 27, 2001 – *within* the 15 month schedule.) During the meeting, EPA expressed its concern that CLH had not responded to two sets of EPA comments on the CAS Work Plan. CLH provided two separate Response-to-Comments documents to EPA on June 23, 2000 and July 6, 2000 documenting its response to EPA's April 1996 and January 2000 comments, respectively. CLH's counsel, Ms. Carol Dinkins, reaffirmed to EPA in a letter dated June 16, 2000 that CLH was committed to complete the CAS in a manner responsive to EPA comments received to date.

On October 4, 2000, CLH met with the Director, Emergency and Remedial Response Division (ERRD) and staff. In addition to reviewing the history of the CAS, CLH explained that it was committed to completing CAS and had convened an independent panel of experts to review the Work Plan and the administration of the CAS to ensure the integrity of the program in the absence of EPA's approval.

The history of the Expert Panel, its charge, and the questions posed to it are reviewed and discussed in the attached letter. In summary, the Expert Panel was charged with considering two major questions, having four and three sub-points, respectively, as follows.

The two major questions are:

1. Is the conduct of a site-specific CAS at the Passaic River site necessary to support an accurate risk assessment?
2. Is CLH's proposed survey Work Plan sufficient to characterize local fish consumption behavior for risk assessment purposes?

With regard to the first question, the Panel was asked to render an opinion as to:

- A. The importance of the fish consumption pathway to the overall risk assessment (i.e., is it necessary to understand this pathway in order to understand the potential health risks posed by the Site?)
- B. The relevance and appropriateness of the existing default fish consumption data set (i.e., are there existing data that can be used to yield an accurate assessment of risk via consumption of fish from the Study Area?).
- C. The relative degree of uncertainty that would be introduced into the risk assessment if default data were used instead of site-specific data.
- D. Whether a site-specific survey is required in order to ensure informed regulatory decision-making at this site (i.e. would the degree of uncertainty introduced by default

assumptions prohibit informed decision-making?).

With respect to the second question, the Panel was asked to render an opinion as to whether the Work Plan:

- A. Has clearly stated objectives and methods,
- B. Has appropriately accommodated EPA's comments, and
- C. Will collect the necessary information to support an accurate risk assessment.

Briefly, the conclusions expressed by the Expert Panel are summarized below:

Question 1: The Panel's opinion is that a site-specific creel/angler survey is necessary for the Passaic River site.

- 1A: The Panel is in "strong agreement" that a fish consumption pathway is needed to evaluate risks posed by contaminants in the Passaic river, and that site specific data are required for this evaluation.
- 1B: The Panel disagreed with the Agency's position that existing data on fish consumption are adequate for an appropriate risk assessment.
- 1C: The Panel could not render an opinion on the "relative degree of uncertainty" resulting from default data, but stated that the estimated consumption would be "significantly different...based on the site visit and initial evaluation by the Panel."
- 1D: The Panel concurred that site-specific data are necessary for informed regulatory decision-making.

Question 2: The Panel concluded that the proposed Creel Angler Survey Work Plan will provide the required information, if the issue of sampling days vs. anglers is addressed. The calculations to obtain valid parameter estimates will require considerable effort to explore and compare alternative estimation options. The Panel supports CLH's proposal to use sensitivity analyses to address the assumptions inherent in the approach.

- 2A: The Panel found that CLH's Work Plan provided a "...detailed and intensive" approach, and that the CLH team was responsive to the Panel's comments and concerns.
- 2B: The Panel agreed that the revised Creel Angler Survey Work Plan addressed EPA's comments.

Ms. Janet Conetta
Passaic River Study Area Creel/Angler Survey: Expert Panel Letter
January 16, 2002
Page 4

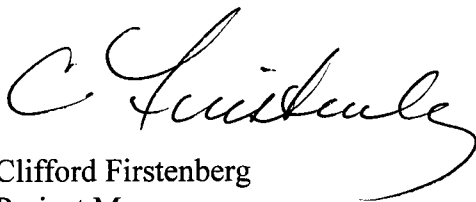
2C: "The Panel believes that the revised Work Plan will result in the collection of the useful and necessary information to support" the risk assessment.

The only qualification of the CAS provided in the Panel's letter is a recommendation that CLH communicate data that are of public health importance to appropriate public health and environmental agencies in a timely manner. By transmittal of the CAS Data Report to EPA, with copies to the New Jersey Department of Environmental Protection (NJDEP) on September 27, 2001, CLH has already complied with part of this recommendation. In order to comply with the Panel's expectation that CLH notify public health agencies, CLH hereby requests that EPA provide such notice, or direct that CLH provide such notice, to specific agencies responsible for human health issues in and around the Passaic River Study Area. If CLH does not receive such notification or direction within 60 days of receipt of this letter, we will submit copies of the CAS Data Report directly to local health agencies in response to the Panel's request.

In conclusion, the Expert Panel's letter observed that the CAS is a "...major step forward in how fish consumption studies are designed and conducted in support of site-specific risk assessments." CLH asks that the Agency review and endorse the use of these data in the risk assessment to be conducted for the Passaic River Study Area.

Please include this letter and the enclosed Expert Panel letter in the official administrative record for this Administrative Order on Consent.

Sincerely,



Clifford Firstenberg
Project Manager
On behalf of Occidental Chemical Corporation
(as successor to Diamond Shamrock Chemicals Company)

Enclosure

(2 copies sent)

Ms. Janet Conetta
Passaic River Study Area Creel/Angler Survey: Expert Panel Letter
January 16, 2002
Page 5

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